

1 MICHAEL J. BETTINGER (STATE BAR NO. 122196)
mike.bettinger@klgates.com
2 RACHEL R. DAVIDSON (STATE BAR NO. 215517)
rachel.davidson@klgates.com
3 MIKAL J. CONDON (STATE BAR NO. 229208)
mikal.condon@klgates.com
4 J. MICHAEL KEYES (STATE BAR NO. 262281)
mike.keyes@klgates.com
5 K&L GATES LLP
4 Embarcadero Center, Suite 1200
6 San Francisco, CA 94111
Phone: (415) 882-8200
7 Fax: (415) 882-8220

8 Attorneys for Defendant
9 Carma Laboratories, Inc.

10
11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 MICHAEL TURCIOS, on behalf of
16 himself and all others similarly situated,

17 Plaintiff,

18 vs.

19 CARMA LABORATORIES, INC., a
20 Wisconsin corporation,

21 Defendant.
22
23
24
25
26
27
28

Case No. CV12-8487- JGB (Ex)

**DECLARATION OF PAUL
WOELBING IN SUPPORT OF
CARMA LABORATORIES INC.'S
MOTION FOR RULE 11
SANCTIONS**

Date: May 6, 2013
Time: 9:00 a.m.
Location: Courtroom 1
Judge: Hon. Judge Jesus G. Bernal

PAUL WOELBING DECLARATION
Case No. CV12-8487-JGB (Ex)

DECLARATION OF PAUL WOELBING

I, Paul Woelbing, declare as follows:

1. I am the current President of Carma Laboratories, Incorporated ("Carma Labs). I submit this Declaration in support of Carma Lab's Motion for Rule 11 Sanctions. I have personal knowledge of the matters set forth herein, and if called as a witness, I could competently so testify.

2. Carmex was invented by my grandfather, Alfred Woelbing, in 1937. Since that time, Carmex has been sold in the trade dress protected opal white jars with yellow caps.

3. From 1937 until 2010, Carmex was sold in its distinctive opal white and yellow jars. Although Carma Labs switched from glass to solid plastic in 1996 because it could no longer consistently obtain quality glass, the plastic jars were exact duplicates of the original glass jars. The interior volume of the container and amount of product sold remained the same: 0.25 ounces.

4. In 2010, Carma Labs made the second change to the Carmex jars since the invention of the product in 1937. In an effort to reduce the amount of plastic used in the creation of the Carmex jar, Carma Labs increased the concavity of the exterior bottom of its Carmex container. This change allowed Carma Labs to reduce its carbon footprint and reduce costs, while still embracing its distinctive and trade dress protected shape and continuing to use the assembly line manufacturing unit that is the backbone of the Carma Labs operation. The interior volume of the container and amount of product sold remained (and remains) the same as it has always been: 0.25 ounces.

5. Carma Labs has never sold a larger opal jar containing 0.25 ounces of Carmex.

6. Attached hereto as Exhibit A is a true and correct copy of the press release entitled "Carmex Jar Goes Green" that Carma Labs posted on its website

1
PAUL WOELBING DECLARATION
Case No. CV12-8487-JGB(Ex)

1 promoting its environmentally friendly change to its consumers and retailers. The
 2 announcement promoted the change as part of Carma Labs' "constant[] . . . lookout
 3 for ways we can bring Carmex to you in more environmentally-friendly fashions
 4 without compromising our product." Carma Labs assured consumers that it had not
 5 "changed the product or the amount – you still get .25 oz of the same moisturizing lip
 6 balm in each jar. Now there is just less jar."

7 7. Carma Labs' website also has a "Frequently Asked Questions" ("FAQs")
 8 section, available at <http://mycarmex.com/faqs>, which answers the question "Has the
 9 Shape of the Jar Changed Recently?" with the following explanation:

10 At Carma Labs, we are constantly on the lookout for ways we can bring
 11 Carmex to you in more environmentally-friendly fashions without
 12 compromising our product. We were able to make the Carmex jar "greener" in
 13 2010. Don't worry, we didn't change the product or the amount – you still get
 14 .25 oz. of the same moisturizing lip balm in each jar. Now, there is simply less
 15 jar. We made the bottom of the jar more concave which uses 20% less plastic in
 16 every jar. This small reduction in waste adds up quickly: we will reduce our
 17 plastic use by 70,000 pounds each year! That annual reduction of 35 tons of
 18 plastic also means that we're saving 35 tons of freight from being shipped
 19 which means less fuel will be used.

20 A true and correct copy of Carma Labs' FAQ page is attached hereto as Exhibit B.

21 8. Carma Labs has received feedback from many long-time, loyal Carmex
 22 consumers thanking us for reducing our environmental impact and for our efforts to
 23 "go green."

24 9. Many of Carmex's major retailers have demanded that suppliers, like
 25 Carma Labs, undertake such efforts to make their products "greener." For example,
 26 Wal-Mart—one of Carma Labs' largest retailers—released a "Packaging Scorecard"
 27 to Carmex and other suppliers, which set forth its expectation that suppliers would
 28 "us[e] less packaging, utilize[e] more effective materials in packaging, and sourc[e]
 these more efficiently[.] A true and correct copy of the Wal-Mart "Packaging
 Scorecard" is attached hereto as Exhibit C.

1 10. I believe that Carma Labs' environmental efforts are also consistent with
2 California's state-wide waste-reduction policies. It is my understanding that
3 California promotes itself as a national leader in waste reduction and recycling, and
4 that the California Department of Resources Recycling and Recovery (CalRecycle)
5 encourages companies to adopt environmental policies and to look for ways to reduce
6 waste.

7 11. Carma Labs offers a full refund of the purchase price of its .25 oz
8 Carmex product to any dissatisfied consumer. This offer is advertised on Carmex sold
9 in cardboard blister packs, as well as on our website. A true and correct copy of our
10 money back guarantee is attached hereto as Exhibit D.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed this 14th day of March, 2013, in Franklin, Wisconsin.

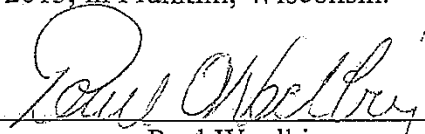
14
15 
16 Paul Woelbing
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Carmex Jar Goes Green

DON'T SHOW AGAIN ✕ CLOSE ✕

BEFORE

AFTER

CARMEX JAR GOES GREEN

The product and the amount are the same but we are eliminating 20% of the plastic from the jar bottom. This will save 35 tons of plastic from being wasted and from being shipped so less fuel will be used.

[Read more](#)

CONTACT US GET ANSWERS WHERE TO BUY MERCHANDISE ABOUT US REQUEST A SAMPLE

OUR PRODUCTS MOISTURIZE PROTECT HEAL HOW IT WORKS

Latest News

ALL YOU EVER WANTED TO KNOW

HERE'S MINE.
WHERE'S YOURS?

There is no other product on the market better than Carmex to protect lips from the sun and wind.

Y.H.
Lone Tree, CO

MEDIA INQUIRIES

Kristi Arndt
Phone: 763-782-0265
Email: info@peridotgroup.net

Barb Mednick
Phone: 651-486-7007
Email: info@peridotgroup.net

<< Back

Carmex Jar Goes Green

Hello Friends,

At Carma Labs, we are constantly on the lookout for ways we can bring Carmex to you in more environmentally-friendly fashions without compromising our product. I am pleased to report that we have good news on that front: we have made the Carmex jar "greener".

BEFORE

AFTER

Don't worry, we haven't changed the product or the amount – you still get .25 oz. of the same moisturizing lip balm in each jar. Now, there is simply less jar. We made the bottom of the jar more concave which uses 20% less plastic in every jar. This small reduction in waste adds up quickly: we will reduce our plastic use by 70,000 pounds each year! That annual reduction of 35 tons of plastic also means that we're saving 35 tons of freight from being shipped which means less fuel will be used.

The new greener jar should be starting to hit the shelves of stores near you now. Please contact us if you have any questions. Thank you!

Sincerely,
Paul

<http://www.mycarmex.com/about-us/news/detail/carmex-jar-goes-green/default.aspx>[9/19/2011 1:47:15 PM]

EXHIBIT B

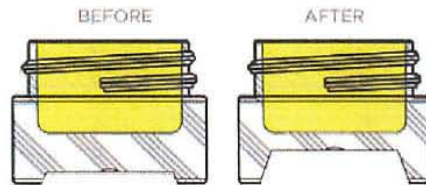
What is the Best Lip Balm | What is the Best Skin Care | What causes Cold Sores | Carmex Lip Balm & Skin Care Products

[home](#) | [faq's](#) [contact us](#) [newsletter sign-up](#) | [where to buy](#) [coupons](#)United States - [Change Country](#)[lip care](#) [skin care](#) [about us](#)

FAQs

So many questions. So let's get to it.

HAS THE SHAPE OF THE JAR CHANGED RECENTLY?



At Carmex Labs, we are constantly on the lookout for ways we can bring Carmex to you in more environmentally-friendly fashions without compromising our product. We were able to make the Carmex jar "greener" in 2010. Don't worry, we didn't change the product or the amount – you still get .25 oz. of the same moisturizing lip balm in each jar. Now, there is simply less jar. We made the bottom of the jar more concave which uses 20% less plastic in every jar. This small reduction in waste adds up quickly: we will reduce our plastic use by 70,000 pounds each year! That annual reduction of 35 tons of plastic also means that we're saving 35 tons of freight from being shipped which means less fuel will be used.

IS CARMEX TESTED ON ANIMALS?

WHAT DOES SPF MEAN?

WHY DOES CARMEX TINGLE WHEN YOU PUT IT ON?

IS CARMEX ADDICTIVE?

DOES CARMEX CONTAIN GLUTEN?

MY CARMEX STAINED MY CLOTHES IN THE WASH. WHAT DO I DO?

DOES THE FORMULA CHANGE FOR THE DIFFERENT FORMS OF CARMEX?

HAS CARMEX CHANGED FORMULA RECENTLY?

The Carmex formula remains faithful to the Alfred Woelbing's original 1937 formula. Carmex is made in batches and some ingredients are natural, so the scent and color of each batch may vary slightly; the effectiveness will not.

We always work to include the highest-quality ingredients in our formulas. The purity and consistency of our ingredients are, in some instances, better and more pure than they were years ago. This increase in quality can change some of the original characteristics of the ingredient. For instance, lanolin of years ago was darker and sometimes smelled musty; today's light-yellow lanolin is almost odorless.

If you purchase a Carmex product that you are not 100% satisfied with, we want to hear about it. We are also happy to replace any product that does not meet your expectations, or send you a refund if you provide us with proof of purchase. [Money back guarantee](#)

HOW CAN I LEARN MORE ABOUT LIP CARE?

Newsletter

You heard it here first.

Sign up for our newsletter, and you'll get updates on what's new at Carmex, plus you'll be the first to know about special offers.

* First Name: * Last Name: * Email: [SUBMIT](#)

Let's take care of that

- Dry, Chapped Lips
- Cold Sores
- Dry Skin
- Rough, cracked skin
- Protecting lips from the sun
- Dry, cracked feet

[VIEW ALL](#)

EXHIBIT C

Wal-Mart Unveils "Packaging Scorecard" to Suppliers

PACK EXPO Keynote Address Details and Demos Company's Packaging Metrics

Attention: See "Related Resources" below to download today's keynote address and Q&A session at PACK EXPO International

***Note:** Fast forward to minute 11:00 in order to start at the beginning of the presentation

CHICAGO, November 1, 2006 – Wal-Mart Stores, Inc. today released a packaging scorecard to continue its commitment of reducing packaging across its global supply chain by 5 percent by 2013, helping Wal-Mart and its suppliers improve packaging and conserve resources. The company first announced this packaging initiative at the Clinton Global Initiative in New York City in September 2006, but did not reveal the specific metrics until today's PACK EXPO keynote address, "The Wal-Mart/Sam's Club Packaging Vision."

"We at Wal-Mart recognize that we have unique strengths and a unique opportunity to have a positive impact on the environment through our own actions, those of our customers, and those of our suppliers," said Matt Kistler, vice president of package & product innovations for Sam's Club. "As vital as the packaging initiative is to reaching our environmental goals, it is also very good for our business and our suppliers' business."

Wal-Mart's packaging scorecard is a measurement tool that allows suppliers to evaluate themselves relative to other suppliers, based on specific metrics. The metrics in the scorecard evolved from a list of favorable attributes announced earlier this year, known as the "7 R's of Packaging": Remove, Reduce, Reuse, Recycle, Renew, Revenue, and Read. Through months of consultations, the Packaging Sustainable Value Network, a group of 200 leaders in the global packaging industry, including suppliers, experts, and internal and external stakeholders, outlined the following metrics for the packaging scorecard:

- 15% will be based on GHG / CO2 per ton of Production
- 15% will be based on Material Value
- 15% will be based on Product / Package Ratio
- 15% will be based on Cube Utilization
- 10% will be based on Transportation
- 10% will be based on Recycled Content
- 10% will be based on Recovery Value
- 5% will be based on Renewable Energy
- 5% will be based on Innovation

These criteria are valuable tools for suppliers to determine how their packaging innovations, environmental standards, energy-efficiencies and use of materials match up against those of their peers. Suppliers will receive an overall score relative to other suppliers, as well as relative scores in each category. For example, a supplier may find it is in the 50th percentile in the Cube Utilization category for effectively using space in pallets and shipping containers, but that same supplier may only be in the 20th percentile in Recycled Content. This model gives suppliers the opportunity to focus on specific changes within the context of a fluid environment, driving constant change and improvement in the supply chain.

"The packaging scorecard is a great tool for Wal-Mart to run a more efficient business, but also has significant benefits for its suppliers," said Ben Miyares, vice president of industry relations for the Packaging Machinery Manufacturers Institute (PMMI) who hosted PACK EXPO. "This company is showing real leadership by introducing a tool and a process to get tangible results toward an ambitious goal."

Today's announcement is the next in a plan to reach a 5 percent packaging reduction across Wal-Mart's supply chain by 2013. In addition to preventing millions of pounds of trash from reaching landfills, it will save energy and reduce emissions. Starting today, more than 2,000 private label brand suppliers will gain access to the packaging scorecard, including the ability to input information and measure their performance against competitors. For all other suppliers, an automated online demonstration is available at

www.scorecardlibrary.com. An additional website, www.marketgate.com/packaging, showcasing the Packaging Supplier Virtual Trade show, will also go live today to help product suppliers find packaging suppliers who can help them make improvements and conserve resources more effectively.

On February 1, 2007, Wal-Mart will share the packaging scorecard with its global supply chain of more than 60,000 suppliers. During a one year trial period, suppliers will be able to input, store and track data, learning and sharing their results as desired. As of February 1, 2008, Wal-Mart will begin using the packaging scorecard to measure and recognize its entire supply chain based upon each company's ability to use less packaging, utilize more effective materials in packaging, and source these materials more efficiently relative to other suppliers.

"We are encouraged by the positive response from our suppliers and are looking forward to continuing this collaboration," added Kistler. "We have an opportunity to make a real positive impact and inspire change across the packaging industry."

About Wal-Mart Stores, Inc.

Wal-Mart Stores, Inc. operates Wal-Mart discount stores, SuperCenters, Neighborhood Markets and SAM'S CLUB locations in the United States. The company has operations in Argentina, Brazil, Canada, China, Costa Rica, El Salvador, Germany, Guatemala, Honduras, Japan, Mexico, Nicaragua, Puerto Rico and the United Kingdom. The company's securities are listed on the New York Stock Exchange and NYSE Arca, formerly the Pacific Stock Exchange, under the symbol WMT. More information about Wal-Mart can be found by visiting www.walmartfacts.com.

EXHIBIT D



Don't love it? It's on us.

Let us know if you are not completely satisfied with your Camrex purchase, and we'll give you your money back. Simple as that. All we ask is that you mail us a photocopy of your receipt and the reason it didn't work for you. We want to make it right. And we want to always make you happy. Please send your receipt and your reason for the refund to:

Camna Laboratories, Inc.
Customer Service
5901 West Airways Avenue
Franklin, Wisconsin 53132
U.S.A.



CARMEX

Money Back Guarantee

Suffering from chapped lips and occasional cold sores, Alfred Woolbing invented Carmex[®] lip balm in Milwaukee in the early 1930s. Formulated with a variety of natural ingredients, the mixture was carefully hand-poured into small glass jars, which Alfred would sell to pharmacists from the trunk of his car. Over the last 70 years, people have come to love the lip balm that works like no other. *It Soothes. It Heals. It Protects.* Now available in flavors and with SPF, Carmex lip balm comes in squeeze tubes and click sticks – as well as Alfred's original formula in the little jar! The Woolbing family still runs the business today, answering every letter and email! Carmex lip balm is tested on family members – not on animals. Please visit us at mycarmex.com.

Drug Facts

Active Ingredients	Purpose
Camphor 1.7%	Analgescic
Menthol 0.7%	Antifish
Phenol 0.4%	Anesthetic

Uses

Helps to provide relief of the symptoms of cold sores and dry chapped lips.

Warnings

For external use only. When using this product, avoid contact with eyes. Stop use and consult a physician if irritation or rash occurs. Keep out of reach of children.

Directions

Apply Carmex lip balm to lips and lips only. Rub gently until completely absorbed. For best results, apply frequently.

Other important information

Keep this and all medications out of the reach of children and away from heat.

Keep this and all medications out of the reach of children and away from heat.

© 2012 Carmex, Inc. All rights reserved. Carmex is a registered trademark of Carmex, Inc. Carmex is a registered trademark of Carmex, Inc. Carmex is a registered trademark of Carmex, Inc.

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California by a member of the Bar of this Court, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is Four Embarcadero Center, Suite 1200, San Francisco, CA 94111.

On **March 15, 2013**, I served the document(s) described as:

DECLARATION OF PAUL WOELBING IN SUPPORT OF CARMA LABORATORIES INC.'S MOTION FOR RULE 11 SANCTIONS

on the parties to this action named on the attached service list by the method described below.

	(By Personal Service) I caused a true and correct copy of said document(s) to be served by hand to the addressee(s) on the attached service list, with the name and address of the person served shown on the envelope.
X	(By Electronic Transmission) I transmitted a true and correct copy of said document(s) by electronic mail to the offices of the addressee(s) on the attached service list. I did not receive within a reasonable time after the transmission any message or other indication that the transmission was unsuccessful.
	(By Facsimile Transmission) I transmitted a true and correct copy of said document(s) by facsimile to the offices of the addressee(s) on the attached service list. Upon completion of the facsimile transmission, a transmission report was issued showing the transmission was complete and without error.
	(By Overnight Delivery) I enclosed a true and correct copy of said document(s) in an envelope/package provided by an overnight delivery carrier addressed to the addressee(s) on the attached Service List, sealed it, and placed it for collection and overnight delivery following the ordinary business practices of K&L Gates LLP. I am readily familiar with K&L Gates LLP's practice of collecting and processing correspondence for overnight delivery. On the same day that correspondence is placed for collection and overnight delivery, it is collected by an overnight delivery carrier. Delivery fees are pre-paid or provided for in accordance with the ordinary business practices of K&L Gates LLP.
X	(By U.S. Mail) I enclosed a true and correct copy of said document(s) in an envelope addressed to the addressee(s) on the attached service list and placed it for collection and mailing following the ordinary business practices of K&L Gates LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid at San Francisco, California.

Executed on March 15, 2013 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Rachel Davidson
Rachel Davidson

SERVICE LIST

Christopher P. Ridout, Esq.
Caleb LH Marker, Esq.
Devon Marie Lyon, Esq.
RIDOUT & LYON, LLP
555 E. Ocean Boulevard, Suite 500
Long Beach, CA 90802
Telephone: (562) 216-7380
Facsimile: (562) 216-7385
Email: c.ridout@ridoutlyonlaw.com; c.marker@ridoutlyonlaw.com;
d.lyon@ridoutlyonlaw.com

Bradley Christopher Buhrow
ZIMMERMAN REED .
14646 North Kierland Boulevard, Suite 145
Scottsdale, AZ 85254
Telephone: (480) 348-6400
Facsimile: (480) 348-6415
Email: brad.buhrow@zimmreed.com